



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,747	07/18/2003	Ray Gerald Thomas	5853-262	2765

30448 7590 06/08/2004
AKERMAN SENTERFITT
P.O. BOX 3188
WEST PALM BEACH, FL 33402-3188

EXAMINER

ROGERS, DAVID A

ART UNIT PAPER NUMBER

2856

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action SummaryApplication No. **OK**

10/622,747

Applicant(s)

THOMAS ET AL.

Examiner

David A. Rogers

Art Unit

2856

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 17-19 is/are rejected.
- 7) ☒ Claim(s) 3 and 6-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5, and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by United States Patent 4,801,434 to Kido *et al.*

Kido *et al.* discloses a fluid sampling device comprising two housings (reference items 10 and 30). Within each of the housings are springs (reference items 25, 26, 45, and 46), piston rods (reference items 23 and 43), and connection rods (reference items 22 and 42). Activation of push rods (reference items 21 and 41) compresses the plurality of springs and moves the piston rods to the lower end of their respective housings. As further disclosed by Kido *et al.*, the push rods and piston rods are urged upward by the potential energy stored in the compressed springs located in the housings in order to obtain a sample within a tip (reference item 6). The housings must be watertight and/or airtight so that the sample fluid in the tip is retained. Any leaks in the housing would cause the sample fluid in the tip to drip or otherwise flow and not be properly retained.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kido *et al.* as applied to claim 1, and further in view of United States Patent 4,744,955 to Shapiro.

Kido *et al.* teaches a spring-based apparatus for obtaining a fluid sample. Kido *et al.* does not teach the use of a filter in conjunction with the means to obtain the sample.

Shapiro teaches a device for obtaining a sample. The device, as seen in figures 4 and 5, comprises a syringe (reference item 10) with a plunger shaft (reference item 32), and a spring (reference item 34). The device may further comprise a filter (reference item 64). Filter of the fluids allows for larger contaminants to be excluded from the sample to be analyzed.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kido *et al.* with the teachings of Shapiro to provide an apparatus for obtaining a fluid sample comprising a filter.

5. Claims 1, 5, and 17-19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over United States Patent 5,553,58 to Dabberdt *et al.*

Dabberdt *et al.* teaches a fluid sampling apparatus (reference item 10, 18, 31, or 32). The apparatus comprises a plurality of individual samplers (reference item 38). The apparatus further comprises a source of potential energy (reference item 212) for powering the individual samplers. The apparatus is also disclosed as comprising an antenna with a transmitter and receiver (see column 4, lines 9-15). Furthermore, the apparatus is taught as having a housing “constructed of materials appropriate for a wide variety of environmental conditions so that the components internal to the housing are adequately protected” and “constructed with materials that protect the internal components of the sampling system from external elements.” Such protection commonly includes being watertight and/or airtight so as to avoid contamination from the external environment.

The applicant discloses the use of an antenna and receiver, along with a control circuit (reference item 6). The applicant also discloses that the receiver is connected to the control circuit (see applicant’s disclosure, page 14, §0044). While the applicant does also disclose that there can be a master sampler with an antenna and receiver (see applicant’s disclosure, page 16, §0048), this particular embodiment must still have a control circuit in order to functionally operate any of the other samplers. That is, the signals to the antenna/receiver

are interpreted by the control circuit to functionally operate any of the samplers.

Therefore, designating one of the samplers as a master sampler that has the antenna/receiver operates in a manner similar to that of Dabberdt *et al.* Designating a master sampler that has the antenna/receiver combination does not patentably distinguish over the apparatus of Dabberdt *et al.*

Claim Objections

6. Claim 3 is objected to because of the following informality. It is highly recommended that claim 3 be written as:

3. The fluid sampler of claim 1, wherein said structure for drawing fluid comprises at least one spring-loaded syringe that stores said potential energy and is connected to at least one solenoid valve that operates to release said potential energy.

Appropriate correction is required.

Allowable Subject Matter

7. Claims 3 and 6-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See also the objection to claim 3 noted above.

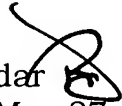
Conclusion


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Rogers whose telephone

number is (571) 272-2205. The examiner can normally be reached on Monday - Friday (0730 - 1600).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


dar
May 27, 2004


HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800